

July 9, 2004

**AO DRAFT COMMENT PROCEDURES**

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-22 is available for public comments under this procedure. It was requested by the Honorable Doug Bereuter

Proposed Advisory Opinion 2004-22 is scheduled to be on the Commission's agenda for its public meeting of Thursday, July 22, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern) on July 21, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

### **CONTACTS**

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2004-22, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

### **MAILING ADDRESSES**

Commission Secretary  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Rosemary C. Smith  
Associate General Counsel  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 9, 2004

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

Mai T. Dinh  
Assistant General Counsel

Anthony Buckley  
Staff Attorney

Subject: Draft AO 2004-22

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 22, 2004.

Attachment

2

3 The Honorable Doug Bereuter  
4 P.O. Box 94794  
5 Lincoln, NE 68509

**DRAFT**

6  
7 Dear Congressman Bereuter:

8 This responds to your letter dated June 7, 2004, requesting an advisory opinion  
9 concerning the application of the Federal Election Campaign Act of 1971, as amended  
10 (“the Act”), and Commission regulations to your proposal to transfer campaign funds to  
11 the Nebraska State Republican Party.

12 ***Background***

13 You state that you are leaving the U.S. House of Representatives, effective  
14 August 31, 2004.<sup>1</sup> You further state that the Nebraska State Republican Party has  
15 purchased an office building to be renovated and used as its headquarters. Your principal  
16 campaign committee, Bereuter for Congress, recently transferred \$5,000 from its  
17 campaign account to the Nebraska State Republican Party for remodeling the building,  
18 and you are contemplating transferring another \$10,000 to \$15,000 for those same  
19 purposes. You ask if Bereuter for Congress is permitted to transfer such funds, and if so,  
20 whether they may be transferred before August 31, 2004. You further ask if there are any  
21 other factors that may affect your ability to transfer funds for this purpose.

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<sup>1</sup> On December 16, 2003, you publicly announced that you would not be seeking reelection in 2004.

1    ***Legal Analysis and Conclusions***

2           Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002, a  
3   candidate's campaign funds may be spent only for one or more of the four permitted uses  
4   enumerated in 2 U.S.C. 439a, and must not be converted to the personal use of any  
5   individual (2 U.S.C. 439a(b)). A candidate's principal campaign committee may  
6   transfer, without limitation, any contributions received to a State committee of a political  
7   party. *See* 2 U.S.C. 439a(a)(4); *see also* 11 CFR 113.2(c). These provisions do not limit  
8   the purposes that any transferred funds may be put to, nor do they restrict the amount that  
9   may be transferred in any specific period of time.<sup>2</sup> The Commission understands that  
10   Bereuter for Congress has sufficient funds in its campaign account to make the proposed  
11   transfers.

12           Accordingly, the Commission concludes that Bereuter for Congress may transfer  
13   \$10,000 to \$15,000 in campaign funds to the Nebraska State Republican Party for the  
14   purpose of remodeling its party headquarters, and that any or all of the funds you wish to  
15   transfer may be transferred before August 31, 2004.

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1 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
2 of the facts or assumptions presented, and such facts or assumptions are material to a  
3 conclusion presented in this advisory opinion, then the requestor may not rely on that  
4 conclusion as support for its proposed activity.

5

6

Sincerely,

7

8

Bradley A. Smith

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Chairman